

REMARKS

In response to the Official Office action with a mail date of March 1, 2006, reconsideration of the above referenced application is respectfully requested.

The rejection of claims 18, 21, and 23 under 35 USC 103(a) as being unpatentable over Grimes et al. in view of U.S. Patent 6,543,181 to Baker et al or Grimes et al in view of U.S. Patent 6,585,990 to Huang is respectfully traversed.

The Office states that Grimes et al. discloses a trap comprising a device/method for providing uniform emission of a flying insect attractant, consisting of a container at 10,14, having a top surface, a bottom surface and side walls citing example figure2, having a composition of at least one volatile liquid attractant at 11, for targeting at least one flying insect species, and a first opening proximate 16 in the top of the container citing example figure 2, wherein the wick area exposed to the atmosphere can be increased or decreased over time to maintain maximum attractant emission citing example figure 2, and a second opening proximate 14a, in the top of the container, smaller than the first opening and large enough to prevent film closure by a liquid citing example figure 2, wherein the second opening maintains air pressure in the container wherein the

container emits the at least one volatile attractant for at least about six months without replenishment of the attractant citing figure 2. The Office then states that Grimes et al. reference discloses hanging the device citing at 13 in figure 1. The Office states that Grimes et al does not disclose a volatile liquid attractant that is specific for one targeted flying insect species.

The Office then states that Baker et al does disclose volatile liquid attractant that is specific for one targeted flying insect species citing column 2, lines 62-67 and column 2, lines 1-34 where the specific one targeted flying insect is fruit flies. The Office concludes that it would have been obvious to one of ordinary skill in the art to take the device of Grimes et al and add the volatile liquid attractant being specific for one targeted flying insect species of Baker et al., so as to allow for the device to only eradicate the selected species of animals intended by the device.

The Office further states that the Huang reference discloses volatile liquid attractant that is specific for one targeted flying insect species citing column 3, lines 39-48 where the targeted insect species is houseflies. The Office concludes that it would have been obvious to one of ordinary skill in the art to take the device of Grimes et al. and add the volatile liquid attractant being specific for one targeted insect species of

Huang so as to allow for the device to only eradicate the selected species of animals intended by the device.

Applicants respectfully submit that the combination of Grimes et al in view of Baker et al or Grimes et al in view of Huang fails to render the instantly claimed invention *prima facie* obvious to one of ordinary skill in the art at the time the claimed invention was made. Grimes fails to teach a trap containing a device , or a method of mass trapping comprising a device, wherein the device is **consisting** of a container having a top surface, a bottom surface, and side walls, having a composition of at least one insect specific volatile liquid attractant specific for one targeted flying insect species, and a first opening in the top of said container to frictionally receive a wick, a wick inserted into said first opening of said container wherein the length of said wick is frictionally adjustable to provide an emission rate of said at least one targeted flying insect species over an extended period of time of at least about six months, and a second opening smaller than the first and large enough to prevent film closure by a liquid, wherein said second opening allows air to enter into said container to create air pressure which allows a steady flow of said attractant into said wick. Grimes teaches a device that includes a tray or cup of any suitable size or configuration but adapted to contain a quantity of water. Within the tray is a

pedestal and within the pedestal and tray is a tubular magazine which extends down toward the bottom of the tray and serves to support a capillary member or wick whose function is to draw water upward to the top of the pedestal. At the top of the pedestal is a pad made of a plurality of layers of fabric which is adapted to contain any suitable **dry poison**. The patent states that figure 2 is similar to figure 1 with the cap or guard removed. It is merely a drawing without elements 17 and 18 which cover the wick when in use. **Therefore, the wick is not adjustable in the working model.** It is not the operable invention; it is shown to illustrate each and every part of the invention such as in an exploded view of a mechanical patent. Element 17 sits over and in contact with the wick so that the wick delivers water to element 17 in order to solubilize the toxicant. Furthermore, Grimes fails to teach a wick that extends into a liquid containing an attractant specific for one targeted insect species. **Grimes does not teach the use of any attractant, volatile or otherwise, specific for one targeted insect species as required by the claims of the present invention.** Element 18 is a guard that retains the pads in position on top of the pedestal and allows flies to reach through the member 18 to partake of the poison solution on element 17. These elements are outside the scope of the presently claimed invention. Furthermore, Grimes et al. teach the use of a tubular magazine to support a capillary

member or wick which is outside the scope of the presently claimed invention. Finally Grimes fails to teach an open-ended trap that allows air passage through said trap wherein said trap includes a device consisting of a container of claim 21 and the method of claim 23.

Baker et al. fails to cure the deficiencies of Grimes since the patent fails to teach the use of a liquid volatile attractant specific for one targeted flying insect species wherein the liquid attractant is in the container of the presently claimed invention. Baker et al teaches the use of an attractant absorbed on a wick which is merely placed in the bottom of a cup and a lid then sealed in position. The lid has a hole drilled in it which is the only aperture for the attractants to emanate through and for entrance of insects. See Example III. **The reference fails to teach the use of an adjustable wick that is inserted into a container having a composition of at least one volatile liquid attractant specific for one targeted flying insect species.**

Although the patent teaches that a Drosophila fly attractant or attractant-trapant composition in the trap is provided as a free aqueous solution also serving as a trapant, or in a sustained release matrix, **the patent fails to teach an adjustable wick frictionally inserted into said first opening of said container wherein a portion of said wick area is exposed externally to an atmosphere and said exposed wick area can be increased or**

decreased over time to maintain a uniform rate of emission providing maximum attraction for said flying insect.

Furthermore, Baker teaches that the dispensers release the attractant for more than about two weeks and therefore maintains the ability of the device to attract flies for about two weeks. See column 14, lines 47-51. Finally Baker et al fails to teach an open-ended trap that allows air passage through said trap wherein said trap includes a device consisting of a container of claim 21 and the method of claim 23.

The combination of Grimes taken with Baker would teach a device that includes a tray or cup of any suitable size or configuration but adapted to contain a quantity liquid attractant specific for one targeted insect species. Within the tray is a pedestal and within the pedestal and tray is a tubular magazine which extends down toward the bottom of the tray and serves to support a capillary member or wick whose function is to draw water upward to the top of the pedestal. At the top of the pedestal is a pad made of a plurality of layers of fabric which is adapted to contain any suitable **dry poison**. The teachings of the combination of references would result in an invention wherein the attractant would travel up the wick which is not exposed to the atmosphere as required by the instantly claimed invention, and wet the pad made of a plurality of layers of fabric and solubilize the dry poison. There would be no control

of the release rate of the attractant and the device would be operable for about two weeks as taught by Baker. Finally the combination of references fails to teach an open-ended trap that allows air passage through said trap wherein said trap includes a device consisting of a container as claimed in claim 21 and in the method of claim 23.

The combination of Grimes in view of Huang teaches a device that includes a tray or cup of any suitable size or configuration but adapted to contain a quantity liquid attractant specific for one targeted insect species. Within the tray is a pedestal and within the pedestal and tray is a tubular magazine which extends down toward the bottom of the tray and serves to support a capillary member or wick whose function is to draw water upward to the top of the pedestal. At the top of the pedestal is a pad made of a plurality of layers of fabric which is adapted to contain any suitable **dry poison**. The teachings of the combination of the two references would include a substance such as a pheromone absorbed into the wick, it would be carried to the pad containing a dry poison via capillary action of the water going up the wick. The combination fails to teach one of ordinary skill in the art at the time the claimed invention was made a device with an adjustable wick that is exposed to the atmosphere. There would be no control of the release rate of the attractant since the references fail to teach adjustable wicks. Huang

teaches that the composition of the claimed invention was at least as effective after 24 hours as the commercial standard that it was compared to. The presently claimed invention, shows in Table 1, that the claimed invention is much more attractive than the commercial standard when the wick is adjusted to 2 inches exposed to the atmosphere even up to 10 weeks. Finally, the combination of references fails to teach an open-ended trap that allows air passage through said trap wherein said trap includes a device consisting of a container as claimed in claim 21 and in the method of claim 23.

There would be no motivation to one of ordinary skill in the art to combine Grimes with Baker or Huang since the combination of teachings teach the use of static wicks, the references are totally silent on an adjustable wick as required by pending claims 18, 21 and 23 and with respect to claims 21 and 23, the combination fails to teach the trap of the instantly claimed invention. There is simply no motivation save for the teachings of the inventor's application to produce the claimed invention. The Office is using the improper standard of **IMPROPER** hindsight analysis. It is impermissible to use the claimed invention as an instruction manual or template to piece together the teachings of the prior art so that the claimed invention is rendered *prima facie* obvious.

The Office is also using the improper standard of obvious to

try. It is respectfully submitted that the essence of obviousness does not arise by merely picking and choosing from the prior art to produce the claimed invention. "In order to establish *prima facie* obviousness, it is necessary for the Examiner to present evidence preferably in the form of some teaching, suggestion, incentive, or general available knowledge, that one of ordinary skill in the art would have been led to combine the relevant teachings of the applied references in the proposed manner to arrive at the claimed invention. *Ex parte Levengood*, 28 USPQ2d, 1300 (Bd. Pat. & Int'f, 1993). Starting from this correct standard of obviousness, the error of the Office is clear-it is improper because the Office has failed to identify teachings in the prior art motivating the skilled artisan to produce the device of the presently claimed invention. No references or combination of references have been provided which would teach, suggest, or motivate one of ordinary skill in the art to modify Grimes et al. to provide at least one liquid volatile insect attractant specific for attracting one insect in said container, an adjustable wick and an opened ended trap that allows air passage through said trap comprising a device of the instantly claimed invention described in claims 21 and 23. The Baker and Huang patents fail to cure the deficiencies of Grimes et al. Furthermore the combination of Grimes et al. taken with Baker et al or Huang fails to teach a container which emits said

at least one volatile attractant specific for one targeted insect species for at least about six months without replenishment of said attractant. There is simply no motivation save for the teachings of applicant's application to produce the claimed invention.

The rejection is improper. Applicants respectfully request withdrawal of the instant rejection.

The rejection of claims 18,19, and 21-23 under 35 USC 103(a) as being unpatentable over U.S. Patent 2,254,948 to Kubalek in view of Baker et al or Kubalek in view of Huang et al is respectfully traversed.

The Office states that with respect to claims 18, 21 and 23, Kubalek discloses a trap comprising a device/method for providing uniform emission of a flying insect attractant, consisting of a container at 10,13,14, having a top surface, a bottom surface and side walls citing figures 1 and 2, having a composition of at least one volatile liquid attractant at 12 and 23 for targeting at least one flying insect species, and a first opening proximate 11, in the top of the container citing figures 1 and 2 to receive an adjustable wick at 11, frictionally inserted into the first opening of the container citing figures 1 and 2 wherein the wick area exposed to the atmosphere can be increased or decreased over time to maintain maximum attractant emission citing figures 1 and

2 and a second opening at 19 or 20 in the top of the container, smaller than the first opening and large enough to prevent film closure by a liquid citing figures 1 and 2, wherein the second opening maintains air pressure in the container wherein the container emits the at least one volatile attractant for at least about six months without replenishment of the attractant citing figures 1 and 2, column 2, lines 34-37. The Office then states that Kubalek discloses hanging the device at 21 and 22. The Office states that Kubalek fails to disclose a volatile liquid attractant that is specific for one targeted flying insect species. With respect to Baker, the Office states that Baker discloses a volatile liquid attractant that is specific for one targeted flying insect species citing column 2, lines 62-67 and column 2, lines 1-34 where the specific one targeted insect is fruit flies. The Office concludes that it would have been obvious to one of ordinary skill in the art to take the device of Kubalek and add the volatile liquid attractant being specific for one targeted flying insect species of Baker et al. so as to allow for the device to only eradicate the selected species of animals intended by the device. With respect to Huang, the Office states the reference discloses a volatile liquid attractant that is specific for one targeted flying insect species citing column 3, lines 39-48 where the targeted species is houseflies. The Office concludes that it would have been obvious to one of ordinary

skill in the art to take the device of Kubalek and add the volatile liquid being specific for one targeted flying insect species of Huang so as to allow for the device to eradicate the selected species of animals intended by the device.

With respect to claims 19 and 22, the Office states that Kubalek as modified by Baker further discloses the composition further includes at least one volatile insecticide wherein the at least one volatile insecticide is absorbed by the wick citing Figure 2 and column 2, lines 26-37 of Kubalek.

With respect to claims 19 and 22, the Office states that Kubalek as modified by Huang further discloses the composition further includes at least one volatile insecticide wherein the at least one volatile insecticide is absorbed by the wick citing Figure 2 and column 2, lines 26-37 of Kubalek.

Applicants respectfully submit that the combination of Kubalek modified by Baker et al or Huang fails to render the instantly claimed invention *prima facie* obvious. Kubalek discloses the use of sugar or molasses as an insect attractant. These are not volatile attractants specific for one targeted insect species. The molecules of sugar or molasses do not go into a vapor state as do the attractants defined by the instantly claimed invention as discussed in the response filed January 3, 2006 and herein incorporated by reference in its entirety. **Furthermore Kubalek**

fails to teach a frictionally adjustable wick to provide a uniform emission rate of said at least one volatile attractant which results in maximum attraction of said one targeted flying insect species over a period of six months without replenishing the liquid attractant. The device of Kubalek is for killing insects that come in direct contact with the wick. The attractant, sugar or molasses, remains in solution. The sugar or molasses encourage the insect to ingest enough of the liquid containing the toxicant to kill the insect. The wick is only exposed at the surface of the device in order for the flying insect to come in contact. There is no teaching in the patent that the wick is adjusted to provide a maximum uniform emission rate of at least one attractant which is a volatile attractant which results in maximum attraction of said flying insect over an extended period of at least about six months. The patent is totally silent as to this element of the instantly claimed invention. From the disclosure and figures, the wick is flush with the top of the device. The combination of Grimes taken with Baker would teach a device that includes a container adapted to contain a quantity liquid attractant specific for one targeted insect species serves to support a capillary member or wick whose function is to draw water upward to the top of the pedestal. The teachings of the combination of references would result in an invention wherein the attractant would travel up the wick which

is flush with the top of the container and is not adjustable. There would be no control of the release rate of the attractant and the device would be operable for about two weeks as taught by Baker. Finally the combination of references fails to teach an open-ended trap that allows air passage through said trap wherein said trap includes a device consisting of a container as claimed in claim 21 and in the method of claim 23.

The combination of Kubalek in view of Huang teaches a device that includes a container but adapted to contain a quantity liquid. Within the container is a wick that extends down into the liquid and is flush with the top of the container. The teachings of the combination of the two references would include a substance such as a pheromone absorbed onto the wick; it would be carried to the top of the container where the wick lies flush via capillary action of the water in the container going up the wick. The combination fails to one of ordinary skill in the art at the time the claimed invention was made a device with an adjustable wick that is exposed to the atmosphere. There would be no control of the release rate of the attractant since the references fail to teach adjustable wicks. Huang teaches that the composition of the claimed invention was at least as effective after 24 hours as the commercial standard that it was compared to. The presently claimed invention, shows in Table 1, that the claimed invention is much more attractive than the

commercial standard when the wick is adjusted to 2 inches exposed to the atmosphere even up to 10 weeks. Finally, the combination of references fails to teach an open-ended trap that allows air passage through said trap wherein said trap includes a device consisting of a container as claimed in claim 21 and in the method of claim 23.

There would be no motivation to one of ordinary skill in the art to combine Kublek with Baker or Huang since the combination of teachings teach the use of static wicks, the references are totally silent on an adjustable wick as required by pending claims 18, 19, 21, 22, and 23 and with respect to claims 21 and 23, the combination fails to teach the trap of the instantly claimed invention. There is simply no motivation save for the teachings of the inventor's application to produce the claimed invention. The Office is using the improper standard of **IMPROPER** hindsight analysis. It is impermissible to use the claimed invention as an instruction manual or template to piece together the teachings of the prior art so that the claimed invention is rendered *prima facie* obvious.

The Office is also using the improper standard of obvious to try. It is respectfully submitted that the essence of obviousness does not arise by merely picking and choosing from the prior art to produce the claimed invention. "In order to establish *prima facie* obviousness, it is necessary for the

Examiner to present evidence preferably in the form of some teaching, suggestion, incentive, or general available knowledge, that one of ordinary skill in the art would have been led to combine the relevant teachings of the applied references in the proposed manner to arrive at the claimed invention. Ex parte Levengood, 28 USPQ2d, 1300 (Bd. Pat. & Int'f, 1993). Starting from this correct standard of obviousness, the error of the Office is clear-it is improper because the Office has failed to identify teachings in the prior art motivating the skilled artisan to produce the device of the presently claimed invention. No references or combination of references have been provided which would teach, suggest, or motivate one of ordinary skill in the art to modify Kubalek et al. to provide at least one liquid volatile insect attractant specific for attracting one insect in said container, an adjustable wick and an opened ended trap that allows air passage through said traip comprising a device of the instantly claimed invention described in claims 21-23. The Baker and Huang patents fail to cure the deficiencies of Kubalek et al.

Furthermore the combination of Kubalek et al. taken with Baker et al or Huang fails to teach a container which emits said at least one volatile attractant specific for one targeted insect species for at least about six months without replenishment of said attractant. There is simply no motivation save for the teachings of applicant's application to produce the claimed

invention.

The rejection is improper. Applicants respectfully request withdrawal of the instant rejection.

The rejection of claim 20 under 35 USC 103(a) as being unpatentable over Grimes et al modified by Baker et al. or Grimes et al. as modified by Huang as applied to claim 18 above and further in view of U.S. Patent No. 2,176,345 to Hurwitt is respectfully traversed.

The Office states that Grimes et al. as modified by Baker et al., and Grimes et al. as modified by Huang further disclose the first opening proximate 16 of Grimes et al being of a size to frictionally hold a wick at 16 of Grimes et al. citing figure 2 of Grimes et al., and the second opening proximate 14a of Grimes et al is elongated and narrower than the first opening citing figure 2 of Grimes et al. and the second opening proximate 14a of Grimes et al. is elongated and narrower than the first opening citing figure 2 of Grimes et al. The Office further states that Grimes as modified by Baker et al and Grimes et al. as modified by Huang do not disclose the first opening and second opening forming a single opening. The Office then states that Hurwitt

does disclose the first opening at 22 as seen in Figure 1 and the second opening at any of items 24 as seen in Figure 1 form a single opening as seen in Figure 1. The Office concludes that it would have been obvious to one of ordinary skill in the art to take the device of Grimes et al as modified by Baker et al or Grimes et al as modified by Huang and add the first and second opening forming a single opening of Hurwitt so as to allow for the liquid to be quickly absorbed by the wick and dispense the liquid.

Applicants respectfully submit that the combination of Grimes et al in view of Baker et al or Huang further in view of Hurwitt fails to render the instantly claimed invention *prima facie* obvious. The combination of Grimes taken with Baker would teach a device that includes a tray or cup of any suitable size or configuration but adapted to contain a quantity liquid attractant specific for one targeted insect species. Within the tray is a pedestal and within the pedestal and tray is a tubular magazine which extends down toward the bottom of the tray and serves to support a capillary member or wick whose function is to draw water upward to the top of the pedestal. At the top of the pedestal is a pad made of a plurality of layers of fabric which is adapted to contain any suitable **dry poison**. The teachings of

the combination of references including Hurwitt would result in an invention wherein the attractant would travel up the wick which is not exposed to the atmosphere as required by the instantly claimed invention, and wet the pad made of a plurality of layers of fabric and solubilize the dry poison. There would be a plate over the wick at the top section prior to the pad that has small openings 24 as described by Hurwitt, and an opening 22 as described by Hurwitt which would allow for the wick to have a greater surface area at the pad. Openings 22 and 24 would not be found in the top of the container according to the combination of references as required by claim 18 upon which claim 20 depends in the instant application. There would be no control of the release rate of the attractant and the device would be operable for about two weeks as taught by Baker.

The combination of Grimes in view of Huang further in view of Hurwitt teaches a device that includes a tray or cup of any suitable size or configuration but adapted to contain a quantity liquid attractant specific for one targeted insect species. Within the tray is a pedestal and within the pedestal and tray is a tubular magazine which extends down toward the bottom of the tray and serves to support a capillary member or wick whose function is to draw water upward to the top of the pedestal. At the top of the pedestal is a pad made of a plurality of layers of fabric which is adapted to contain any suitable **dry poison**. The

teachings of the combination of the two references would include a substance such as a pheromone absorbed into the wick, it would be carried to the pad containing a dry poison via capillary action of the water going up the wick. There would be a plate over the wick at the top section prior to the pad that has small openings 24 as described by Hurwitt, and an opening 22 as described by Hurwitt which would allow for the wick to have a greater surface area at the pad. Openings 22 and 24 would not be found in the top of the container according to the combination of references as required by claim 18 upon which claim 20 depends in the instant application. The combination fails to one of ordinary skill in the art at the time the claimed invention was made a device with an adjustable wick that is exposed to the atmosphere.

There would be no control of the release rate of the attractant since the references fail to teach adjustable wicks. Huang teaches that the composition of the claimed invention was at least as effective after 24 hours as the commercial standard that it was compared to. The presently claimed invention, shows in Table 1, that the claimed invention is much more attractive than the commercial standard when the wick is adjusted to 2 inches exposed to the atmosphere even up to 10 weeks.

There would be no motivation to one of ordinary skill in the art to combine Grimes with Baker or Huang further in view of Hurwitt since the combination of teachings teach the use of

static wicks, the references are totally silent on an adjustable wick as required by claim 20. There is simply no motivation save for the teachings of the inventor's application to produce the claimed invention. The Office is using the improper standard of **IMPROPER** hindsight analysis. It is impermissible to use the claimed invention as an instruction manual or template to piece together the teachings of the prior art so that the claimed invention is rendered *prima facie* obvious.

The Office is also using the improper standard of obvious to try. It is respectfully submitted that the essence of obviousness does not arise by merely picking and choosing from the prior art to produce the claimed invention. "In order to establish *prima facie* obviousness, it is necessary for the Examiner to present evidence preferably in the form of some teaching, suggestion, incentive, or general available knowledge, that one of ordinary skill in the art would have been led to combine the relevant teachings of the applied references in the proposed manner to arrive at the claimed invention. *Ex parte Levengood*, 28 USPQ2d, 1300 (Bd. Pat. & Int'f, 1993). Starting from this correct standard of obviousness, the error of the Office is clear-it is improper because the Office has failed to identify teachings in the prior art motivating the skilled artisan to produce the device of the presently claimed invention. No references or combination of references have been provided

which would teach, suggest, or motivate one of ordinary skill in the art to modify Grimes et al. to provide at least one liquid volatile insect attractant specific for attracting one insect in said container, and an adjustable. The Baker, Huang and Hurwitt patents fail to cure the deficiencies of Grimes et al.

Furthermore the combination of Grimes et al. taken with Baker et al or Huang further in view of Hurwitt fails to teach a container which emits said at least one volatile attractant specific for one targeted insect species for at least about six months without replenishment of said attractant. There is simply no motivation save for the teachings of applicant's application to produce the claimed invention.

The rejection is improper. Applicants respectfully request withdrawal of the instant rejection.

In view of the above remarks, it is believed that all of the claims are in condition for allowance. Accordingly, it is respectfully requested that the instant application be allowed to issue. If any issues remain to be resolved, the Examiner is invited to telephone the undersigned at the number below.

n the event this paper is deemed not timely filed, the undersigned hereby petitions for an appropriate extension of time. Please charge any fees which may be required by this paper or at any time during prosecution of the instant application, or credit any overpayment, to deposit account 50-2134.

Respectfully Submitted,

May 31, 2006
DATE

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CERTIFICATE OF FILING VIA FACSIMILE

The undersigned hereby certifies that the attached **AMENDMENT** was this day, May 31, 2006 filed in the United States Patent and Trademark Office via facsimile to facsimile number 571-273-8300.
Total Pages: 30

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